

# **GIFTS**

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## **I. REFERENCES.**

### **A. Statutes:**

1. 5 U.S.C. § 7342 (Foreign Gifts and Decorations Act).
2. 31 U.S.C. § 1353 (Acceptance of Travel and Travel Related Expenses from Non-Federal Sources).
3. 10 U.S.C. §2601 (General Gift Funds)

### **B. Regulations:**

1. Government-wide
  - a. 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (Office of Government Ethics Rules).
    - (1) Proposed Rule, 56 Fed. Reg. 33778, Jul. 23, 1991.
    - (2) Final Rule, 57 Fed. Reg. 35006, Aug. 7, 1992.
  - b. 41 C.F.R. Chapter 304, Payment of Travel Expenses from a Non-Federal Source.

2. DOD-wide

- a. DOD 5500.7-R, Joint Ethics Regulation (JER)
- b. DODD 1005.13, Gifts and Decorations from Foreign Governments, 19 Feb 2002, w/ Ch. 1, Dec. 6, 2002.
- c. DODD 4500.56, DOD Policy on the Use of Government Aircraft and Travel, Mar. 2, 1997, w/ Ch. 1, Apr. 19, 1999.
- d. DOD Task Force Guidance on Ethics Issues in Government-Contractor Teambuilding, Jul. 15, 1999.
- e. DOD SOCO Holiday Guidance for Federal Personnel, November 28, 2005.
- f. DOD General Counsel Guidance on Analyzing Invitations to DOD Officials to Participate in Fundraising Activities and to Accept Gifts Related to Events, Aug. 18, 1997.
- g. DOD General Counsel Information Paper on Gifts Intended Solely for Presentation, Nov. 2003.
- h. DOD General Counsel Guidance for Receipt of Gifts from Non-Federal Sources, Sep. 26, 2001.

3. Army

- a. AR 1-100, Gifts and Donations, Nov. 15, 1983.
- b. AR 1-101, Gifts for Distribution to Individuals, May 1, 1981.
- c. SECARMY Memorandum, Policy for Travel by Department of the Army Officials, 25 June 2004.
- d. Mr. Reres Memo of 8 November 2005, Determination Concerning Offers of Gifts to Injured, Wounded to Ill Soldiers and Employees.

- e. Army internet resources for gifts and other ethics related material.  
[www.jagcnet.army.mil/SOCO](http://www.jagcnet.army.mil/SOCO) and  
<http://www.hqda.army.mil/ogc/eandf.htm>
- 4. Department of the Navy
  - a. Secretary of the Navy (SECNAVINST) 4001.2G, Acceptance of Gifts, Sep. 16, 1996 w/ ch. 1, Apr. 16, 1997.
  - b. SECNAVINST 1650.1G, Navy and Marine Corps Awards Manual, Chapter 7 (Foreign Awards, Gifts and Decorations), Jan. 7, 2002.
  - c. Chief of Naval Operations (OPNAV) Instruction 4001.1D, Acceptance of Gifts, April 30, 1997.
  - d. Marine Corps Order P5800.16A, w/Ch. 1-5, Marine Corps Manual for Legal Administration, Apr. 1, 1998.
- 5. Air Force
  - a. AFI 24-101, Passenger Movement, October 27, 2004.
  - b. AFI 51-601, Gifts to the Department of the Air Force, Nov. 26, 2003.
  - c. AFI 51-901, Gifts from Foreign Governments, Feb. 16, 2005.

## **II. GENERAL ETHICAL PRINCIPLES APPLICABLE TO GIFTS.**

- A. Public service is a public trust - 5 C.F.R. § 2635.101(b)(1).
- B. Employees shall not solicit or accept a gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties – (b)(4).

- C. Employees shall not use public office for private gain – (b)(7).

### III. GIFTS FROM OUTSIDE SOURCES.

- A. Basic Punitive Prohibition on Gifts from Outside Sources. An employee shall not solicit or accept, directly or indirectly, a gift from a prohibited source or given because of the employee's official position. 5 C.F.R. § 2635.202(a).

1. "Prohibited Source" means any person or entity that:

- a. Is **seeking official action** by the employee's agency;
- b. **Does or seeks to do business** with the employee's agency;
- c. Is **regulated** by the employee's agency;
- d. Has interests that may be substantially **affected by the employee's official duties**; or
- e. Is an **organization a majority of whose members** fit into one or more of these categories.

A person does not become a prohibited source merely because of the offer of a gift.

2. "Indirect Gifts" include gifts:

- a. Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee; or
- b. Given to any other person, including a charity, on the basis of designation, recommendation, or other specification by the employee.

3. The test for "official position" is whether the gift would have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his federal position. 5 C.F.R. § 2635.203(e).

B. Practical Approach. Three-part analysis:

1. Is the item actually a gift? The term "gift" is broadly defined and includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, and lodgings and meals (5 C.F.R. § 2635.203(b)). It does not include the following items (**exclusions**):
  - a. Coffee, donuts, and similar modest items of food and refreshments when offered other than as part of a meal;
  - b. Greeting cards and items with little intrinsic value, such as most plaques, certificates, and trophies which are intended solely for presentation;
  - c. Rewards and prizes in contests open to the public. Contest must be "open to the public" and employee's entry into the contest must not be part of his/her official duties.

**PRACTICE TIP:** See OGE Memorandum DO-99-017, Apr. 26, 1999, "Prizes as Gifts – Guidance concerning the exclusion at 5 C.F.R. 2635.203(b)(5)" and OGE Informal Advisory Opinion 00 X 6, dated 18 Jul 00 for additional helpful guidance on accepting gifts won in contests.

- d. Commercial discounts available to the general public or to all Government or military personnel. Would not apply to discounts to subgroups based on rank, position or organization. The exception in 5 CFR 2635.204(c)(2)(iii) may apply.

**PRACTICE TIP:** See OGE Memorandum DO-99-001, Jan. 5, 1999, "Employee Acceptance of Commercial Discounts and Benefits"

- e. Loans from banks and other financial institutions (entities in the business of loaning money) on terms generally available to the public;
- f. Anything paid for by the Government or secured by the Government under Government contract;

**PRACTICE TIP:** Examine the contract type (Cost or Fixed Price) and whether the item secured by the government causes additional costs under the contract. Government should not procure items in order to avoid gift rules. “Agencies are responsible for ensuring that such arrangements are otherwise appropriate under applicable law, including their authorizing statutes, procurement law, and principles prohibiting unauthorized augmentation of appropriations.” OGE Opinion 99 X 1, January 5, 1999.

- g. Anything for which the employee pays market value;

**PRACTICE TIP:** Market value should not include private or membership clubs, or limited access on-line purchases.

- h. Anything accepted by the Government in accordance with agency gift acceptance statutes. Examples include:

- (1) Gifts of Travel – 31 U.S.C. § 1353.
- (2) Foreign Gifts – 5 U.S.C. § 7342.
- (3) General Gift Funds – 10 U.S.C. § 2601.
- (4) Gifts for Defense Dependent Schools – 10 U.S.C. § 2605.
- (5) Contributions to Defense Programs – 10 U.S.C. § 2608.
- (6) Competitions of Excellence: Acceptance of Monetary Awards – 10 U.S.C. § 2610.
- (7) Army Specific Gift Statutes:

Gifts to United States Military Academy – 10 U.S.C. § 4356.

(8) Department of the Navy Specific Gift Statutes:

(a) Gifts to the United States Naval Academy – 10 U.S.C. § 6973/6974.

(b) Gifts to Vessels – 10 U.S.C. § 7221.

(c) Gifts for Welfare of Enlisted Members – 10 U.S.C. § 7220.

(9) Air Force Specific Gift Statutes: None.

2. Does an exception apply? Common **exceptions** (5 C.F.R. § 2635.204) when an employee may accept a gift:

- a. **Gifts of \$20 or Less.** Unsolicited gifts with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50. Does not apply to gifts of cash or investment interests (e.g., stocks or bonds).

**PRACTICE TIP:** Employees may decline gifts to keep aggregate value at \$20 or less, but may not pay differential over \$20 to retain gift(s) – No “buy down”. Applies to both \$20 per occasion and \$50 per calendar year limits.

- b. **Gifts Based on a Personal Relationship.** Gifts based on a personal relationship, such as a family relationship or personal friendship rather than the position of the employee;

**PRACTICE TIP:** Relevant factors to consider in making the determination include history of the relationship and whether family member or friend personally pays for the gift. Also look at the occasion where the gift is presented. For example, Commanding General is personal friends with contractor Program Manager. A “personal” gift given during official presentation may not satisfy the exception.

- c. **Discounts and Similar Benefits.** In addition to those opportunities and benefits excluded from the definition of a gift by 5 C.F.R. § 2635.203(b)(4), employees may accept:
- (1) Reduced membership or other fees in organization activities offered to all Government employees or all military personnel by professional organizations if the only restrictions on membership relate to professional qualifications (e.g., ABA offers discount membership fee to all Government attorneys);
  - (2) Opportunities and benefits, including favorable rates and commercial discounts:
    - (i) Offered to members of a group or class in which membership is unrelated to Government employment;
    - (ii) Offered to members of an organization, such as an agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size;
    - (iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay;



- (b) **PRACTICE TIP:** OGE Memorandum DO-99-001, Jan. 5, 1999, “Employee Acceptance of Commercial Discounts and Benefits.” OGE 04 x 7 Letter to an Ethics Official dated July 6, 2004 provides an excellent analysis of 5 CFR 2635.204(c)(2)(i).
  
- d. **Awards and Honorary Degrees.**
  - (1) Awards. Employees may accept gifts that are a bona fide award or incident to a bona fide award in recognition for meritorious public service by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Cash and gifts in excess of \$200 require written determination from agency ethics official.
  - (2) Honorary Degrees. Employees may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. § 1141(a) with agency ethics official determination that timing would not cause reasonable person to question employee's impartiality in a matter affecting the awarding institution;
  
- e. **Gifts Based on Outside Business or Employment.** An employee may accept meals, lodgings, transportation, and other benefits:
  - (1) Resulting from the business activities of the spouse when it is clear that the benefits have not been offered or enhanced because of the employee's official position;
  - (2) Resulting from the employee's outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of the employee's status; or
  - (3) Customarily provided by a prospective employer in connection with bona fide employment discussion;

- f. **Gifts in Connection with Political Activities.** An employee who takes an active part in political management or in political campaigns (consistent with the Hatch Act Reform Amendments of 1993), may accept meals, lodgings, transportation, and other benefits in connection with such participation from a political organization described in 26 U.S.C. § 527(e).

**PRACTICE TIP:** Remember that Political Activities of Uniformed Members are regulated by DOD Directive 1344.10, 2 August 2004. This exception may not apply to Uniformed Members.

- g. **Widely Attended Gatherings and Other Events.**

- (1) **Speaking and Similar Engagements.** An employee assigned in his official capacity to participate as a speaker, panel member, or to otherwise provide information on behalf of the agency at an event may accept free attendance at the event on the day of his presentation from the sponsor of the event.
- (2) **Widely Attended Gatherings.** An employee may accept free attendance from the sponsor of a "widely attended gathering" if the agency determines that employee's attendance is in the interest of the agency because it will further agency programs or operations (employee attends in a personal capacity). Free attendance may be accepted from other than the sponsor of a "widely attended gathering" if more than 100 people will be in attendance and the cost is \$305 or less.
- (3) "Free Attendance" may include waiver of all or part of a conference fee, the provision of food, refreshments, entertainment, instruction, and material furnished to all attendees as an integral part of the event. It does not include travel or lodging expenses.
  - (a) Army Office of General Counsel Letter, dated 19 August 2004. Purely sporting or social events do not qualify as widely attended gatherings.

- (b) Acting Secretary of the Army Memorandum, dated 2 March 2001. Determination of Agency interest made on a case-by-case basis after considering such factors as whether employees have a financial interest in the organization sponsoring the event.

**PRACTICE TIP:** When an employee accepts free attendance at a widely attended gathering, such attendance must be in a leave or other authorized absence status. The employee may not attend while on or as part of his/her official duties. Moreover, the agency may not expend appropriated funds to send personnel to widely attended gathering events.

- h. **Social Invitations from Other Than Prohibited Sources.** Food, refreshments, and entertainment (not travel or lodging) at a social event attended by several persons where the invitation is from a person who is not a prohibited source and where no one in attendance is charged a fee to attend the event.
- i. **Meals, Refreshments, and Entertainment in Foreign Areas.** Employees assigned to duty in, or on official travel to, a foreign area may accept food, refreshments, and entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event provided:
  - (1) The market value does not exceed the per diem for the foreign area;
  - (2) There is participation in the meeting or event by non-US citizens or representatives of foreign governments or entities;
  - (3) Attendance at the meeting or event is part of the employee's official duties; and
  - (4) The gift of meals or entertainment is from a person other than a foreign government.
- j. **Gifts to the President and Vice President.**

- k. **Gifts Authorized by Supplemental Agency Regulation.** An employee may accept a gift the acceptance of which is authorized by supplemental agency regulation.
  - (1) Unsolicited gifts of free attendance for DOD employees (and spouses) at events sponsored by state or local governments or non-profit, tax-exempt civic organizations, where the agency has determined its community relations interests are served by attending the event (JER 2-202a);
  - (2) Educational scholarships and grants for DOD employees or their dependents (JER 2-202b); and
  - (3) Gifts at ship launch and similar ceremonies (JER 2-300c).
- 3. Gifts Accepted Under Specific Statutory Authority.
- 4. Would using the exception undermine Government integrity?
  - a. Appearance concerns. If a gift falls within one of the exceptions, acceptance of the gift will not violate any of the basic obligations of public service set forth in 5 C.F.R. § 2635.101(b), including the principle that employees shall avoid creating even the "appearance" of an ethical violation. However, it is never inappropriate and frequently prudent to decline a gift offered by a prohibited source or given because of one's official position.
  - b. ***Notwithstanding the applicability of any exception, an employee may not:***
    - (1) Use his official position to solicit or coerce the offering of a gift;
    - (2) Accept a gift in exchange for being influenced in the performance of official action (bribe or illegal gratuity);
    - (3) Accept a gift in violation of statute (e.g., 18 U.S.C. §§ 201(b) and 209). *See* OGE Memorandum DO-99-024, May 19, 1999 (United States v. Sun Diamond Growers); or

- (4) Accept gifts from the same or different sources so frequently that a reasonable person would conclude that the employee is using his public office for private gain;
- (5) Accept Vendor Promotional Training (i.e., training provided by any person for the purpose of promoting its products or services) contrary to applicable rules governing procurement of supplies and services.

C. Handling Improper Gifts from Outside Sources (5 C.F.R. § 2635.205). When an employee cannot accept a gift, the employee should:

- 1. Refuse the gift (if possible) and diplomatically explain the restrictions on acceptance of gifts by Federal employees.
- 2. Return the gift or pay the donor its fair market value.
- 3. Perishable items may be donated to charity, shared within the office, or destroyed with the approval of the supervisor or ethics counselor.

D. Reporting Gifts from Outside Sources. Employees, who file financial disclosure reports, must report travel-related cash reimbursements or other gifts totaling more than \$305 from any one source received by the employee, spouse, or dependent children during the reporting period on:

- 1. OGE Form 450 (Confidential Financial Disclosure Report), Part V: Gifts and Travel Reimbursements.
- 2. SF 278 (Public Financial Disclosure Report), Schedule B, Part II.

#### **IV. FOREIGN GIFTS.**

A. U.S. Constitution (Art. I, Sec. 9, Cl. 8) provides:

*No Title of Nobility shall be granted by the United States: And no person holding any Office of Profit or Trust under them, shall, without the consent of Congress, accept any present, Emolument, Office or Title from a King, Prince or foreign state.*

B. 5 U.S.C. § 7342, Receipt and Disposition of Foreign Gifts and Decorations, provides:

1. Employees may accept a gift (or combination of gifts) of "minimal value," i.e., having retail value in the United States at the time of acceptance of \$305 or less, tendered and received as a souvenir or mark of courtesy from a foreign government. "Minimum value" is established by GSA and adjusted every three years based on the Consumer Price Index.
2. Gifts exceeding "minimum value" may be accepted when the gift is in the nature of an educational scholarship or medical treatment or when it appears that refusal is likely to cause offense or embarrassment or adversely affect foreign relations.
  - a. Such gifts are accepted on behalf of the United States and, upon acceptance, become the property of the United States.
  - b. Such gifts must be reported to and deposited with the agency for official use or disposal (return to donor or forward to GSA). For Army, report to and deposit gifts with Office of the Administrative Assistant, OAA Directorate of Logistics ATTN: R. Wesley Webb, 2531 Jefferson Davis Hwy, RM 10110 Arlington, VA 22202. For Air Force, report and deposit gifts in accordance with AFI 51-901. For Department of the Navy, report to and deposit gifts in accordance with SECNAVINST 1650.1G, Chapter 7.
3. Calculation of "minimal value" (JER 2-300b).
  - a. Aggregate the value of gifts at the same presentation from the same source, i.e., same level of government (city, state, or national).
  - b. Do not aggregate the value of gifts from the same source at different presentations (even if on the same day) or different sources at the same presentation.
  - c. A gift from the spouse of a foreign official is deemed to be a gift from the foreign official/government.
  - d. A gift to employee's spouse is deemed to be a gift to the employee.

- C. Gifts of Travel from Foreign Governments. See Section VII below.

## V. GIFTS BETWEEN EMPLOYEES.

- A. General Punitive Rules (5 C.F.R. § 2635.302(a)). An employee shall not, directly or indirectly:

1. Give a gift or make a donation toward a gift for an official superior or solicit a contribution from another employee for a gift to either his own official superior or that of another; or
2. Accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in an official superior-subordinate relationship.
3. “Official superior” means any other employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee or any official superior of the employee, i.e., anyone in the employee’s chain of command. 5 C.F.R. § 2635.303(d).

- B. Exceptions (5 C.F.R. § 2635.304).

1. Unsolicited gifts may be given on an **occasional basis** (not routine), including traditional gift-giving occasions, such as birthdays and holidays. This includes:
  - a. Items (no cash) with an aggregate value of \$10 or less per occasion;
  - b. Items such as food and refreshments that will be consumed at the office;
  - c. Personal hospitality (e.g., meals) at someone's home (of a type and value customarily provided to personal friends); and
  - d. Items in connection with the receipt of personal hospitality (of a type and value customarily provided to personal friends).

2. A subordinate may give a gift appropriate to the occasion or donate toward a gift to an official superior and an official superior may accept a gift on **special infrequent occasions** such as:
    - a. In recognition of an infrequent event of personal significance such as marriage, illness, or birth of a child (would not include a promotion); or
    - b. Upon an occasion that terminates the official superior - subordinate relationship such as transfer, resignation, or retirement.
  3. Group gifts on special infrequent occasions are limited to \$300 in value per donating group (JER 2-203(a)).
    - a. A donating group is comprised of all contributors to that group gift.
    - b. If one employee contributes to two or more donating groups, then the value of the gifts from groups with a common contributor are aggregated for the purposes of the \$300 limit (JER 2-203(a)(2)).
    - c. A gift on a special infrequent occasion that terminates the official superior-subordinate relationship may exceed \$300 per donating group if the gift is appropriate to the occasion and is **uniquely linked to the departing employee's position or tour of duty and commemorates the same**. JER 2-203(a)(3), changed Jan. 2, 1997.
- PRACTICE TIP:** Although not specifically mentioned in JER 2-203, the \$300 limit in JER 2-203(a)(2) is also subject to the no “buy-down” provisions.
4. Solicitations for gifts to an official superior may not exceed \$10 (although employees are free to give more than \$10) and must be completely voluntary (given freely, without pressure or coercion). JER 2-203b.



## VI. TRAVEL PAYMENTS FOR OFFICIAL TRAVEL FROM NON-FEDERAL SOURCES (31 U.S.C. § 1353).

### A. Implementing regulations.

1. 41 C.F.R. Chapter 304, a GSA regulation that applies to Executive Branch employees.
2. JER paras. 4-100 & 4-101, which apply to DOD military members and civilian employees.

### B. Conditions for acceptance. An employee may accept, on behalf of his or her agency, a travel payment from a non-Federal source to attend a meeting or similar function. 41 C.F.R. § 304-5.1. The DOD Component DAEO or designee must concur with the acceptance of official travel benefits. JER 4-101.c. **All** of the following conditions must be present:

1. The gift is in connection with a meeting or similar function relating to the official duties of the employee. (Note: Travel while on pass or in a permissive TDY status is not considered to be official duty for purposes of accepting a gift of travel under 31 U.S.C. § 1353);
2. The function will take place away from the employee's permanent duty station (i.e., the employee must be in a travel status);
3. The travel is determined to be in the interest of the Government;
4. The non-Federal source is not disqualified due to a conflict of interest; and
5. Acceptance of the gift is approved before the travel. 41 C.F.R. § 304-3.12; JER para. 4-100.c(2). **Acceptance may be authorized after the travel has begun if the above criteria are met and the following additional conditions have been satisfied.** 41 C.F.R. § 304-3.13:
  - a. If your agency has already authorized acceptance of payment for some of your travel expenses for that meeting from a non-Federal source, then you may accept on behalf of your agency, payment for any of your additional travel expense from the same non-Federal source as long as –

- (1) The expenses paid or provided in kind are comparable in value to those offered to or purchased by other similarly situated meeting attendees; and
- (2) Your agency did not decline to accept payment for those particular expenses in advance of your travel.

**PRACTICE TIP:** Similarly situated meeting attendees may be defined by functions at the event. For examples, speakers may be offered a room with work areas, while attendees are offered rooms without work areas.

b. If your agency did not authorize acceptance of any payment from a non-Federal source prior to your travel, then –

- (1) You may accept, on behalf of your agency, payment from a non-Federal source of the following expenses:
  - (a) Only the types of travel expenses that are authorized by your travel authorization; and
  - (b) Only travel expenses that are within the maximum allowances stated in your travel orders (e.g., if your travel orders state that you are authorized to incur lodging expenses up to \$100 a night, you may not accept payment from the non-federal source for a \$200 per night hotel room);
- (2) You must request your agency's authorization for acceptance from the non-Federal source within **7 working days** after your trip ends; and
- (3) If your agency does not authorize acceptance from the non-Federal source, your agency must either –
  - (a) Reimburse the non-Federal source for the reasonable approximation of the market value of the benefit provided, not to exceed the maximum allowance stated in your travel orders; or

- (b) Require you to reimburse the non-Federal source that amount and allow you to claim the amount on your travel claim for the trip.

C. "Meeting or similar function" means a conference, seminar, speaking engagement, symposium, training course, or similar event, and is sponsored or co-sponsored by a non-Federal source. 41 C.F.R. § 304-2.1. A "meeting or similar function" need not be widely attended and includes, but is not limited to:

1. An event at which the employee will participate as a speaker or panel member;
2. A conference, convention, seminar, symposium, or similar event the primary purpose of which is to receive training (other than promotional vendor training), or to present or exchange substantive information concerning a subject of mutual interest to a number of parties; or
3. An event at which the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulation.

D. "Meeting or similar function" does **not** include:

1. A meeting or other event required to carry out an agency's statutory and regulatory functions (i.e., a function essential to the agency's mission), such as investigations, inspections, audits, site visits, negotiations, or litigation; or
2. Promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.

E. "Non-Federal source" means any person or entity other than the Government of the United States. The term includes individuals, private or commercial entities, not-for-profit organizations, international or multinational organizations, and foreign, state, or local governments (including the District of Columbia). 41 C.F.R. § 302-2.1.

- F. "Travel-approving authority" is not defined in the JER. However, agencies must ensure that the travel-approving authorities are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment. 41 C.F.R. § 304-5.2.
- G. Travel on commercial airlines. If the non-Federal source offers the employee a gift of travel on a commercial airline, the employee may accept travel in coach class or in premium class other than first class (e.g., business class). However, the employee may not accept a gift of travel in first class, unless the conditions exist that would authorize the Government to purchase a first class airline seat for the employee. 41 C.F.R. § 304-5.5 and 5.6.
- H. Hotels that cost more than the Government lodging rate. Sometimes a non-Federal source will offer a gift of lodging in a hotel, and the cost of the hotel is more than the Government lodging rate for the city where the hotel is located. In that case, the employee may accept the gift of lodging only if the accommodations are "comparable in value to that offered to, or purchased by, other similarly situated individuals attending the function." 41 C.F.R. § 304-5.4.
- I. Conflict of interest analysis. A travel payment from a non-Federal source shall not be accepted if the approval official determines that acceptance under the circumstances would cause a reasonable person to question the integrity of the agency's programs or operations. 41 C.F.R. § 304-5.3. The approval official shall be guided by all relevant considerations, including the following:
1. The identity of the non-Federal source;
  2. The meeting's purpose;
  3. The identity of other expected participants;
  4. The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source;
  5. The significance of the employee's role in the matter; and
  6. The monetary value and character of the travel benefits offered by the non-Federal source.

- J. Gifts to spouses. A Federal agency may accept payment from a non-Federal source for an accompanying spouse when the spouse's presence at the meeting or similar function is in the interest of the agency. 41 C.F.R. § 304-3.14. A spouse's presence at an event may be determined to be in the interest of the agency if the spouse will:
1. Support the mission of the agency or substantially assist the employee in carrying out his/her official duties;
  2. Attend a ceremony at which the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulation; or
  3. Participate in substantive programs related to the agency's programs or operations. JER 4-100d; *see also* DOD/GC Memorandum entitled "Spouse Travel Under 31 U.S.C. 1353," 8 Sep 95.
- K. Form of payment. DoD employees, and their spouses, may not accept cash payments on behalf of the Government. Payments shall be in kind, or by check or similar instrument made payable to the agency. 41 C.F.R. § 304-6.1 and 6.6; JER para. 4-101a(4).
- L. Format for obtaining approval. The website of the DOD Standards of Conduct Office (DoD/GC-SOCO) and Army Standards of Conduct Office have Fact Sheets on 31 U.S.C. § 1353, as well as a format for a memorandum that approves the acceptance of travel payments under this law. These items are available at: [www.jagcnet.army.mil/SOCO](http://www.jagcnet.army.mil/SOCO) and [www.defenselink.mil/dodgc/defense\\_ethics/resource\\_library/pubhandout.htm](http://www.defenselink.mil/dodgc/defense_ethics/resource_library/pubhandout.htm) For Navy, gifts of travel of less than \$10,000 may be approved by Type Commanders and most Echelon III commands. Review OPNAVINST 4001.1D for the delegation list. Before approving gifts of travel from prohibited sources that exceed \$5000, the approval authority must consult with Navy Assistant General Counsel (Ethics).

- M. Written report of payments received. If the total value of the travel payments received in connection with an event exceeds \$305, the gift must be reported. 41 C.F.R. § 304-6.4; JER para. 4-101a(5). Standard Form (SF) 326 must be used to make this report. SF 326 is entitled “Semiannual Report of Payments Accepted from a Non-Federal Source.” There is also a Standard Form 326A, which is a Continuation Sheet for the SF 326. The SF 326 and 326A are available on the website of the GSA at: [www.gsa.gov/forms/pdf\\_files/sf326.pdf](http://www.gsa.gov/forms/pdf_files/sf326.pdf)

Federal agencies send the reports to the Office of Government Ethics, which is required to make them available for public inspection and copying. 31 U.S.C. § 1353(d)(1). The report must be received by OGE by May 31 (for the period of October 1 – March 31) and November 30 (for the period of April 1 – September 30). **OGE will look at an agency’s gift of travel reporting procedures and files as part of the agency’s program review.**

- N. Financial disclosure report. Travel payments are considered gifts to the Federal agency, not gifts to the individual employee. Thus, such payments to the employee (or the employee's spouse) do not have to be reported on the employee's Public Financial Disclosure Report (SF 278) or Confidential Financial Disclosure Report (OGE Form 450). 41 C.F.R. § 304-3.17.
- O. Gifts of travel that can be accepted under 31 U.S.C. § 1353 and another gift acceptance authority. “A DoD Component may not accept or approve acceptance of travel benefits from non-Federal sources under any other gift acceptance authority (10 U.S.C. § 2601, 5 U.S.C. § 7342, or 5 U.S.C. § 4111) if 31 U.S.C. § 1353 (reference (b)) applies.” JER para. 4-101a(3).

## VII. GIFTS OF TRAVEL FROM FOREIGN GOVERNMENTS.

- A. The Foreign Gifts and Decorations Act states, in relevant part:

An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than "minimal value" if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.” 5 U.S.C. § 7342(c)(1)(B)(ii).

- B. "Minimal value" is currently \$305. The Foreign Gifts and Decorations Act states that GSA will revise the definition of “minimal value” every 3 years to reflect changes in the consumer price index. 5 U.S.C. § 7342(a)(5).

- C. The Foreign Gifts and Decorations Act is implemented by DOD Directive 1005.13, Gifts and Decorations from Foreign Governments, 19 Feb 02.
- D. Approval authority. DODD 1005.13 does not indicate who has authority to accept a gift of travel from a foreign government. Check your agency regulation for guidance on this.
1. Air Force. For Air Force members and employees who are assigned or employed in the continental United States (CONUS), the approval authority is the individual's commander. For Air Force members and employees who are assigned or employed outside CONUS, the approval authority is the commander of the overseas MAJCOM where the individual is located. AFI 51-901, Gifts from Foreign Governments, 15 Feb 05, Table 1, Rules 1 & 2.
  2. Department of the Navy. Per SECNAVINST 1650.1F, para. 720.4, gifts of travel that meet the listed criteria may be accepted by the order issuing authority.
- E. Travel entirely outside United States. 5 U.S.C. § 7342 authorizes the acceptance of "travel taking place entirely outside the United States." Check your agency regulations for additional guidance on this issue.
1. Air Force. The Air Force Instruction on gifts from foreign governments creates a minor exception to the requirement that the travel take place entirely outside the U.S. The Instruction states that a gift of travel may be accepted if the travel "[w]ill take place entirely outside the United States, except when travel across the continental United States (CONUS) is necessarily the shortest, least costly or only route available to the destination."
  2. Department of the Navy. The comparable provision for the Department of the Navy, in SECNAVINST 1650.1F, states that the travel must begin and end outside the United States and "not cross the United States, except when travel across the United States is the shortest, least expensive or only available route to the destination (e.g., Canada or Mexico).
  3. Army. The Secretary of the Army Travel Policy states that travel must begin, end and connect entirely outside of the United States.

## **VIII. ACCEPTING TRAVEL AS A GIFT TO THE AGENCY.**

- A. 10 U.S.C. § 2601 authorizes the Army, Navy, Air Force, Marine Corps and Coast Guard to accept gifts. Another possible way to accept a gift of travel is to accept it as a gift to the agency. To accept a gift of travel as a gift to the agency, it must be accepted IAW the agency's gift acceptance procedures that implement 10 U.S.C. § 2601. JER para. 4-101b. Personnel assigned to DOD activities, other than the military services, may use the acceptance authority of 10 U.S.C. § 2608. Gifts of travel offered to DoD employees who do not work within the Army, Navy, Air Force, or Coast Guard may not be accepted as a gift to the agency under 10 U.S.C. §§ 2601 or 2608.
- B. Examples of when travel can be accepted as a gift to the agency include:
  - 1. Accepting reimbursement of travel expenses of flight crewmembers who accompany Federal Government aircraft to international air shows. JER para. 4-101b(2).
  - 2. Accepting reimbursement of travel expenses incurred by DOD employees who attend ceremonial events in order to enhance a DOD Component's public relations (such as military bands). JER para. 4-101b(2).
  - 3. Accepting travel benefits that are offered after travel has begun, or after travel has been completed JER 4-101.b(2). (Note: it is now possible under 31 U.S.C. § 1353 to accept travel benefits after travel has begun in certain circumstances. 41 C.F.R. § 304-3.13).

## **IX. OTHER GIFTS TO THE AGENCY**

- A. 10 U.S.C. §2601 authorizes the Department Secretary to "...accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of his department." [Underline emphasis added].
  - 1. Gifts of cash or proceeds from the sale of property received under 10 U.S.C. §2601 shall be deposited into the Treasury of the United States in a General Gift Fund for each Department.



2. Funds deposited into the General Gift Fund will be distributed for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.
- B. National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, §374
1. Amends 10 USC 2601, General Gift Funds
  2. Gifts to the Services, vice to individual
  3. Covered personnel: Gifts to the services may be used for the benefit of: “Members of Armed Forces... who incur a wound, injury or illness in the line of duty;” (No combat or combat zone requirement)
  4. Covered gifts: “Real property, personal property, money, or services...”
  5. Implementing regulation: DoD Financial Management Regulation (FMR)
- C. 10 U.S.C. 1588 authorizes the Secretary to accept voluntary services, but not goods associated with the services.
1. Categories:
    - a. Medical services, dental services, nursing services, or other health-care related services.
    - b. Voluntary services to be provided for a museum or a natural resources program.

- c. Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:
    - (A) Family support programs.
    - (B) Child development and youth services programs.
    - (C) Library and education programs.
    - (D) Religious programs.
    - (E) Housing referral programs.
    - (F) Programs providing employment assistance to spouses.
    - (G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.
  - d. Voluntary services as a member of a funeral honors detail.
- 2. Limitations in voluntary services include supervising the employee providing the voluntary service to the same extent as a compensated employee; ensuring that the person providing the service is licensed or credentialed in accordance with applicable law; not placing the person providing services in a policy-making position or compensating for voluntary services, except for necessary incidental expenses.
- 3. DoD Guidance: DoD Instruction 1100.21, Voluntary Services in the Department of Defense, 3/11/2002, implements 10 U.S.C. § 1588 in the Department of Defense.
- 4. Army Guidance:
  - a. AR 1-100, Gifts and Donations: Implements 10 U.S.C. §2601 and §1588.
  - b. AR 1-101, Gifts for Distribution to Soldiers:
    - (1) Not applicable to 10 U.S.C. §2601 and §1588.
    - (2) Specific limitation for gifts that promote health, comfort, convenience, and morale, e.g. reading materials and writing paper.

5. Department of the Navy Guidance: SECNAVINST 4001.2G, Acceptance of Gifts, implements 10 U.S.C. § 2601. SECNAV Instruction 5380.1 implements 10 U.S.C. § 1588; volunteers must submit DD Form 2793 before beginning services. The form is available as an enclosure to SECNAV Instruction 5380.1.

**X. GIFTS TO DEPLOYED OR INJURED SOLDIERS AND THEIR FAMILIES – STATUTORY CHANGES: NATIONAL DEFENSE APPROPRIATIONS ACT FOR FISCAL YEAR 2006, P.L. 109-148, §8127**

A. Para. 3-400, Personal Acceptance of Gifts from Non-Federal Sources

1. Limitation \$305/\$1000 per source per calendar year
2. Retroactive to Sept 11, 2001
3. Must be unsolicited
4. Covered DoD employees – AD Soldiers with combat-related wounds or illnesses.

B. New Joint Ethics Regulation Section 4:

**SECTION 4. PERSONAL ACCEPTANCE OF GIFTS FROM NON-FEDERAL ENTITIES**

*3-400. Acceptance of Gifts by Injured or Ill Service Members and Their Family Members. Pursuant to the authority at section 8127 of P.L. 109-148, the FY 2006 Defense Appropriations Act, (reference (dd)), and notwithstanding 5 U.S.C. 7353 (reference (b)), 5 C.F.R. 2635 (reference (h)), and paragraph 1-300.b., above, covered DoD employees, described at subsection 3-401, below, and the family members of such employees may accept unsolicited gifts from non-Federal entities subject to the following limitations:*

- a. This authority does not apply to gifts from foreign governments and their agents.*
- b. This authority does not apply to gifts that*
  - (1) are accepted in return for being influenced in the performance of an official act;*
  - (2) are solicited or coerced; or*
  - (3) are accepted in violation of any other statute, including 18 U.S.C. sections 201(b) and 209, (reference (i)).*

c. For gifts with an aggregate market value in excess of "minimal value," as adjusted by the General Services Administration in accordance with 41 C.F.R. 102-42.10 (reference (ee)), per source per occasion, or with an aggregate market value exceeding \$1000 received from any one source under the authority of this subsection in a calendar year, an agency ethics official must make a written determination that:

(1) The gift is not offered in a manner that specifically discriminates among covered DoD employees merely on the basis of type of official responsibility or of favoring those of higher rank or rate of pay;

(2) The donor does not have interests that may be affected substantially by the performance or nonperformance of the covered DoD employee's official duties; and

(3) Acceptance would not cause a reasonable person with knowledge of the relevant facts to question the integrity of DoD's programs or operations.  
An agency ethics official may issue a blanket determination to cover all or any category of gifts or all or any group of DoD covered employees.

3-401. Covered DoD Employees. For purposes of this section, covered DoD employees are  
a. active duty members of the Armed Forces, as described at paragraphs 1-211.b, 1-211.c., 1-211.d., and 1-211.e. for the purpose of title 10 authority, above, who  
b. while on active duty on or after September 11, 2001 incurred an illness or injury as described below:

(1) as described in 10 U.S.C. 1413a(e)(2), reference (f)), currently  
(a) as a direct result of armed conflict;  
(b) while engaged in hazardous service;  
(c) in the performance of duty under conditions simulating war; or  
(d) through an instrumentality of war; or  
(2) in an operation or area designated by the Secretary of Defense as a combat operation or a combat zone. The Secretary designates the following as combat zones under this subparagraph.

(a) any area designated by the President of the United States by Executive Order as an area in which U.S. Armed Forces are engaging or have engaged in combat;  
(b) any area designated for treatment as a combat zone by Public Law, including P.L. 104-117, reference (ff)); and  
(c) any area certified by the Secretary of Defense for combat zone tax benefits for directly supporting military operations in combat zones.

3-402. Definitions  
a. Family Members. Parents, siblings, spouse, children, and dependent relatives.  
b. Gift. Gift shall have the meaning at 5 C.F.R. 2635.203(b), (reference (h)).  
c. Market value. Market value shall have the meaning at 5 C.F.R. 2635.203(c), (reference (h)).

3-403. Acceptance of Gifts by Certain Reserve and National Guard Members. Notwithstanding paragraph 1-300.b., above, enlisted members of the Reserve on inactive duty for training and all members of the National Guard, defined at paragraph 1-211.e. and subsection 1-233., above, who meet the criteria at subsection 3-401.b., above, and family members of such members, may accept unsolicited gifts from non-Federal entities in accordance with paragraph 3-400, above.

3-404. Retroactivity. This section shall apply to acceptance of such gifts beginning on September 11, 2001.

*3-405. Delegation. To the extent not included in current delegations, DoD DAEOs and Deputy DAEOs may delegate authority to make the written determination required by paragraph 3-400.b., above, to any agency ethics official, including such officials outside the DoD Component, located at the duty station of covered DoD employees or cognizant of the conditions and circumstances of the covered DoD employees and the offered gifts.*

*3-406. Relationship to illegal gratuities statute. Unless accepted in violation of subparagraph 400.b.(1), above, a gift accepted under this section shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B), reference (i).*

## **XI. FREQUENT FLYER MILES.**

- A. National Defense Authorization Act for FY 2002, P.L. 107-107, Section 1116, Dec. 28, 2001. Repealed Section 6008 of the Federal Acquisition Streamlining Act of 1994 (5 U.S.C. § 5702).
- B. Federal employees (military and civilian) who receive promotional items (including frequent flyer miles, upgrades, or access to carrier club or facilities) as a result of using travel or transportation services obtained at Federal Government Expense or accepted under 31 U.S.C. § 1353 may retain the promotional items for personal use provided the promotional items are obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government. JFTR para. U1200A; JTR para. C1200A.
- C. Section 1116 applies to promotional items received before, on, or after the effective date of P.L. 107-107.

## **XII. UPGRADES ON OFFICIAL TRAVEL -- WHEN YOU MAY ACCEPT THEM AS A GIFT.**

- A. An employee may accept an upgrade to first class (or business class) on official travel in any of the following circumstances.
  - 1. It is an on-the-spot upgrade that is generally available to the public (or at least to all Federal employees or all military members). Examples include an upgrade to a first class airline seat to remedy overcrowding in coach class, and an upgrade to a larger rental car due to a shortage of smaller cars or for customer relations purposes. JER para. 4-202a(1).

2. The upgrade results from a promotional offer that is realistically available to the general public (or to all Federal employees or all military members). For example: an upgrade to first class that is offered to anyone who opens a frequent flyer account. JER para. 4-202a(2). This includes vouchers or upgrade stickers, which are sometimes provided through the Government contract travel office.
  3. The upgrade is offered to anyone who accumulates enough frequent flyer miles to belong to a club or group (such as the Gold Card Club), even if some or all of the miles are from official travel. JER para. 4-202b. For example, an employee who flies 50,000 miles or more in a year on an airline can be a member of the airline's Gold Card Club. If the airline gives all of its Gold Card Club members a free upgrade to first class and the employee earns a membership in the Club as a result of 50,000 miles of official travel, the employee may keep the first class upgrade. The upgrade is the property of the employee, who can do with it whatever he or she wants (e.g., use it for official travel, use it for personal travel, give it to his or her spouse, sell it, or donate it to charity).
- B. However, no upgrade may be accepted if it is provided on the basis of the employee's grade or position. JER para. 4-202a(1).

### **XIII. UPGRADES ON OFFICIAL TRAVEL -- BUYING THEM WITH YOUR PERSONAL FUND OR PERSONAL FREQUENT FLYER MILES.**

- A. Upgrades with personal funds. Federal employees may use their personal funds to upgrade to first class or business class while on official travel. Office of Management and Budget Memorandum, subject: "Travel Upgrades," dated 19 Sep 94; HQ USAF/JAG Memorandum, subject: "Travel Upgrades," dated 9 Jan 95.
- B. Upgrades with personal frequent flyer miles. Federal employees may use their personal frequent flyer bonuses to upgrade to first class or business class while on official travel. Office of Management and Budget Memorandum, subject: "Travel Upgrades," dated 19 Sep 94; HQ USAF/JAG Memorandum, subject: "Travel Upgrades," dated 9 Jan 95.

- C. Air Force Instruction 24-101, Passenger Movement, 27 Oct 04, para. 3-30, states that Air Force personnel who upgrade to First Class or Business Class shall not wear the uniform when doing so. Therefore, if the Air Force member is unable to change into civilian clothes before boarding the aircraft, (s)he should not upgrade.

#### **XIV. THE INVOLUNTARILY BUMP.**

- A. If a Federal employee is involuntarily bumped from an overbooked flight on official travel, any compensation the employee receives (such as a check or a complimentary ticket) belongs to the Government. JFTR para. U1200B2; JTR para. C1200B2; JER para. 4-202a(1); Matter of Charles E. Armer, 59 Comp. Gen. 203, 205 (1980); Matter of John B. Currier, 59 Comp. Gen. 95, 96-97 (1979); Matter of Tyrone Brown, Comp. Gen. Dec. B-192841, February 5, 1979; Matter of Chester Sipkin, Comp. Gen. Dec. B-148879, July 20, 1970, affirmed by Comp. Gen. Dec. B-148879, August 28, 1970; 41 Comp. Gen. 806, 807 (1962).
- B. Depositing the check. If a Federal employee is involuntarily bumped from an overbooked flight on official travel and is given a check or cash, the money belongs to the Government. In the absence of a statutory provision that authorizes the money to be deposited to a specific appropriation, the money should be deposited into the miscellaneous receipts account. 41 Comp. Gen. 806, 807 (1962).

#### **XV. VOLUNTEERING TO GIVE UP YOUR SEAT ON AN OVERBOOKED FLIGHT (THE VOLUNTARY BUMP).**

- A. If an employee is on official travel, the flight is overbooked, and the airline asks for volunteers to give up their seat and take a later flight, the employee may volunteer, as long as doing so would not interfere with the mission.

- B. The employee may keep any benefits or compensation earned as a result of voluntarily relinquishing his or her seat on an overbooked flight, as long as taking the later flight does not result in any additional cost to the Government, and the delay will not detract from the performance of official business. JFTR para. U1200B1; JTR para. C1200B1; JER para. 4-202d; Matter of Charles E. Armer, 59 Comp. Gen. 203, 206 (1980); Matter of Edmundo Rede, Jr., Comp. Gen. Dec. B-196145, January 14, 1980. For example, the employee may not claim extra per diem for the extra time spent away from home because the employee took the later flight. Also, if the employee volunteers to take the later flight, the employee is responsible for any additional travel expenses he or she may incur (extra night in the hotel, additional meals, etc.). JFTR para. U1200B1; JTR para. C1200B1.
- C. Reporting the compensation. If the employee is required to file an OGE Form 450 (Confidential Financial Disclosure Report), and if the compensation has a value greater than \$200.00, the employee must report the compensation on the OGE Form 450. The compensation is not a “gift,” since the employee received it in exchange for a service provided, i.e., taking the later flight. Thus, the compensation should be reported as income, in Part I of the form.

## **XVI. BENEFITS RESULTING FROM INCONVENIENCE TO THE EMPLOYEE WHO IS ON OFFICIAL TRAVEL.**

- A. In Matter of Elizabeth Duplantier – Use of Bonus Lodging Certificates, 67 Comp. Gen. 328 (1988) (B-228696), an employee who was traveling on official business was denied lodging the first night at the selected hotel due to overbooking. The hotel gave the employee a bonus lodging certificate for one free night of lodging. The Comptroller General ruled that the certificate belongs to the Government because of the general rule that employees are required to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty.
- B. In Matter of Dwight Davis, Comp. Gen. Dec. B-257704, November 14, 1994, an employee who was traveling on official business experienced a 5-hour flight delay, and the airline gave him a complimentary round-trip ticket as a "gesture of concern." The Comptroller General ruled that the airline ticket is Government property and may not be retained by the employee. The decision states that an involuntary delay is analogous to an involuntary “bump” from a flight. Note: The decision does not indicate whether the employee made a complaint to the airline about the flight delay.



- C. In Matter of Deborah E. White, GSBCA 13879-TRAV, 97-2 BCA 29,213, September 8, 1997, an Air Force employee was traveling on official business. The hotel where she stayed was less than satisfactory. The room had a slow plumbing leak that resulted in a damp odor and growth of airborne mold spores. The employee paid her bill in full, but complained while departing the hotel. The employee submitted a travel voucher seeking reimbursement for the maximum allowable lodging expenses (the actual rate paid by the employee exceeded the allowable rate). Sometime thereafter, the hotel manager and the employee agreed to reduce the room rate by approximately 50% because of the unsatisfactory condition of the room. The reduction was effected by a credit to the employee's American Express account. When the Air Force learned of the credit, it recouped the difference between what it paid and the amount actually paid by the employee (*i.e.*, the regular rate less the credit). The GSBCA upheld the Air Force recoupment. This case is on the web at:  
<http://www.gsbca.gsa.gov/travel/t138790.txt>

The Army Standards of Conduct Office has opined that compensation for personal injuries belongs to the traveler, and that compensation for delays or inconveniences which detract from mission performance belong to the Government. This position is consistent with *Dwight Davis*. Informally, they have indicated they view *Deborah White* as wrongly decided, in that it failed to address the issue of whether the traveler suffered a personal injury. Recent statutory changes allowing travelers to retain promotional items (Section 1116, P. L. 107-107) must be considered in future cases in which benefits may be considered promotional items.

- D. Luggage. An employee may keep payments received from a commercial carrier as compensation for accompanied baggage that has been either lost or delayed by the carrier. JTR para. C1200(G); JFTR para. U2010(C).

## **XVII. GIFTS OF TRAVEL IN CONTRACTOR AIRCRAFT AND VEHICLES.**

- A. If the transportation is duty related (*i.e.*, received in connection with official duty and having the effect of reducing Government expenditures), it is a gift to the agency, not to the individual. The Government generally should not accept such travel unless: (1) it is permitted in the terms of a contract, (2) the Government has agreed to reimburse the contractor, or (3) acceptance was approved in advance under statutory gift authority. However, if the contractor offers travel after working hours, it would generally be a gift to the individual and could potentially be accepted under the \$20 / \$50 rule. Office of Government Ethics (OGE) Informal Advisory Letter 98 X 8, 25 Jun 98.

- B. The rules on this subject are discussed on pages 38-41 of a document entitled “Ethics Issues in Government-Contractor Partnering.” This document is dated 15 Jul 99, and is on the website of the DOD Standards of Conduct Office at: [http://www.defenselink.mil/dodgc/defense\\_ethics/dod\\_oge/partwd.doc](http://www.defenselink.mil/dodgc/defense_ethics/dod_oge/partwd.doc)
- C. Air Force. On 1 Nov 00, the HQ USAF General Law Division (HQ USAF/JAG) issued a memo (OpJAGAF 2000/78) that provided the following guidance on the issue of Government employees and Advisory and Assistance Services (A&AS) contractor employees riding in the same vehicle when traveling in the performance of A&AS contract tasks. First, Government employees and A&AS contractor employees may ride in the same vehicle when traveling to the same destination on official business. Second, Government employees and A&AS contractor employees may not be required to ride together. Third, if an A&AS contractor employee offers “personal travel” to a Government employee (i.e., travel the Government would not pay for), the “personal travel” may be accepted only if allowed under the rules on gifts from outside sources (under the \$20/\$50 rule, for example). Fourth, where the travel is pursuant to a fixed price contract (with no provision for direct reimbursement of contractor transportation expenses), Government employees and contractor employees generally may not ride together.

## **XVIII. MISCELLANEOUS ISSUES.**

- A. Companion tickets. An airline offers a “free” companion ticket when a round-trip ticket to a specified city is purchased. For guidance on when the Government buys one ticket and receives a second ticket at no additional cost, *see* Matter of Southwest Airlines—Free Companion Ticket, Comp. Gen. Dec. B-254858, 22 Nov 95; and Comp. Gen. Dec. B-270687, 26 Dec 95.
- B. Life insurance proceeds. In Comp. Gen. Dec. B-222234, 9 Dec 86, the Comptroller General ruled that the Government may enter into contracts for travel management services that provide incidental life insurance benefits for Federal employees who travel on official business and purchase their tickets through the contractor-travel agent. The Comptroller General also ruled that life insurance benefits paid under these circumstances may be accepted by the employee’s beneficiaries or estate.
- C. Use of appropriated funds to purchase membership in a travel club. There are three authorities on this issue.

1. In 57 Comp. Gen. 526 (1978) (B-103315), the Comptroller General ruled that individual travel club memberships in the name of a Federal agency and for the exclusive use of named Federal employees could be purchased with appropriated funds, where the purchases will result in the payment of lower overall transportation costs by the Government.
  2. 41 C.F.R. § 301-53.3 is a GSA regulation that is written in the plain-English, question-and-answer format. Section 301-53.3 reads as follows: “Question. May my agency reimburse membership fees in a frequent traveler program? Answer. Yes, if the benefits of membership are expected to exceed the cost of membership.”
  3. In Matter of Donald Leavitt, GSBCA 15062-TRAV, 28 Sep 99, the General Services Board of Contract Appeals (GSBCA) ruled that an Army employee was entitled to be reimbursed for the cost of joining a travel club, where the cost of joining the club was \$40.00, and the employee, as a member of the club, was able to obtain a discounted fare that was \$378.00 less than the contract carrier’s fare for the travel. This case is on the web at: <http://www.gsa.gov/gsbca/travel/t1506228.txt>
- D. Benefits Resulting from Airline Antitrust Litigation. On 11 Jan 95, the HQ USAF General Law Division issued an opinion that AirScrip Certificates issued by the airlines as part of the settlement of the Domestic Air Transportation antitrust litigation may not be used for personal travel, if they were issued in whole or in part based on Government travel.

## **XIX. CONCLUSION.**